IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Crl.MC.No. 207 of 2007()

CC.129/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA

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PETITIONER: ACCUSED:

ANIL SUSEEL, S/O. SUSEELAN,
KUMARY BHAVAN, JANARDHANAPURAM, VARKALA DESOM,
VARKALA VILLAGE.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTORSRI.S.U.NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 207 of 2007

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Dated this the 13th day of February, 2007

O R D E R

The petitioner faces indictment in a prosecution, inter alia, under Section 324 I.P.C. The recording of the evidence is over. The case is at the stage of S. 313 examination. The petitioner filed an application that the counsel may be permitted to answer the questions. The learned Magistrate, by the impugned order, a copy of which is produced as Annex.I, dismissed the said application.

2. The counsel for the petitioner complains that the petitioner is employed abroad and unnecessary insistence on personal appearance of the petitioner is causing him great inconvenience and prejudice. There is no incriminating circumstance against the petitioner at all and in these circumstances it is not necessary to insist on the personal presence of the petitioner for the purpose of examination under Section 313 Cr.P.C., submits the learned counsel. The learned counsel further submits that no witness has tendered any meaningful or effective evidence which the petitioner is bound to explain. It is, in these circumstances, prayed that the

impugned order may be set aside and the petitioner may be questioned as requested by him through his counsel.

3. Report of the learned Magistrate was called for. I have perused the report dt. 2.2.2007 submitted by the learned Magistrate. A copy of the proposed S.313 examination (questions already prepared by the learned Magistrate) has also been forwarded to this Court.

4. I shall carefully avoid any detailed expression of opinion on merits. Suffice it to say that I am satisfied that in the peculiar facts and circumstances of this case, considering the nature of the questions which are to be put to the accused, the prayer of the petitioner is perfectly justified and the same can be allowed.

5. This Crl.M.C. is accordingly allowed. Annex.I order is set aside. C.M.P.No. 5326 of 2006 shall stand allowed and S.313 examination shall be conducted without insisting on the personal presence of the petitioner.

(R. BASANT)
Judge

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